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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Petition of the Association for Local)
Telecommunications Services (ALTS) for a)
Declaratory Ruling Establishing Conditions) CC Docket No. 98-78
Necessary to Promote Deployment of)
Advanced Telecommunications Capability)
Under Section 706 of the Telecommunications)
Act of 1996)

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association ("USTA") files its comments in response to the Public Notice ¹ on the Petition filed by the Association for Local Telecommunications Services ("ALTS").² USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECs").

ALTS urges the Commission to use the Section 706 proceeding to impose regulations on ILECs who deploy advanced telecommunications networks. Specifically, the ALTS Petition for Declaratory Ruling ("Petition") requests that the Commission declare that Sections 251, 252, and 271 of the Telecommunications Act of 1996 ("Act") apply to deployment of

¹ Public Notice DA 98-1019, released June 3, 1998

² *ALTS Petition for Declaratory Ruling* (May 27, 1998).

advanced data networks by ILECs.³ According to ALTS, its Petition also “identifies a series of actions that the Commission should take *now* to promote deployment of new technologies and the innovative services they make possible,” including: (1) establishing new rules and rates for collocation; (2) confirming that Section 251 and 252 of the Act apply to digital facilities and services; and (3) requiring that ILECs provide unbundled digital loops and functionality as unbundled network elements (“UNEs”).⁴

The ALTS Petition is just a restatement of its opposition comments filed in response to the Bell Atlantic, U S WEST, and Ameritech Petitions to deploy advanced telecommunications networks pursuant to Section 706.⁵ USTA incorporates by reference and makes a part of this proceeding its comments and reply comments filed in the RBOC 706 proceedings⁶ and the docket on the request for rulemaking filed by the Alliance for Public Technology (“APT”).⁷

If granted, the ALTS Petition would simply impose additional regulations upon ILECs. In addition, the ALTS Petition would have the Commission ignore the decisions of the 8th Circuit Court of Appeals⁸ on pricing, jurisdictional, and related issues to implement sweeping

³ ALTS Petition for Declaratory Ruling at 1.

⁴ *Id.* at 2-3.

⁵ See ALTS Opposition Comments, CC Docket Nos. 98-11 (Bell Atlantic), 98-26 (U S West), and 98-32 (Ameritech) (April 6, 1998).

⁶ See USTA Comments (April 6, 1998) and Reply Comments (May 6, 1998), CC Docket Nos. 98-11, 98-26, and 98-32.

⁷ See USTA Comments (April 13, 1998) and Reply Comments (May 4, 1998) in RM-9244.

⁸ *Iowa Utils Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997).

regulations that will serve as disincentives to competition.

In its comments on the RBOC petitions to deploy advanced telecommunications networks, ALTS argued that the Commission has already decided the issues raised in the ALTS Petition.⁹ According to its opposition comments, ALTS argues that “[t]he high speed broadband local access that Bell Atlantic and other RBOCs seek to exempt from any unbundling requirement clearly comes under the Commission’s definition of what must be offered as an unbundled element,” ... including “the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.”¹⁰ Similarly, ALTS has argued that the Commission has decided that state commissions may determine whether to require ILECs to provide additional UNEs to facilitate CLECs providing advanced data services.¹¹ If, as ALTS has argued, that the Commission has already decided the issues raised in the ALTS Petition, there would appear to be no reason for this proceeding. Also, if ALTS was so certain that the Commission’s resolution of unbundling, pricing, jurisdictional and related issues have been resolved, ALTS would not be

⁹ ALTS Opposition Comments, CC Docket Nos. 98-11, 98-26, and 98-36 (April 6, 1998).

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 11-12.

filing briefs before the Supreme Court.¹² In any event, the Commission should not pursue the course of action recommended in the ALTS Petition.

Under Section 706 of the Act, the Commission and state commissions shall "encourage the deployment ... of advanced telecommunications capability ... by regulatory forbearance measures that promote competition ... [and] that remove barriers to infrastructure investment."¹³ The ALTS Petition creates further regulations, as opposed to promoting the regulatory forbearance that Section 706 unequivocally requires the Commission to implement. As USTA remarked in its comments:

USTA urges the Commission to abandon its arcane logic and principles favoring regulation over market-based competition by adopting a hands-off approach and simply permit any carrier to construct advanced telecommunications networks without burdensome regulatory interference. The marketplace, not the Commission, will then determine winners and losers. Conversely,

¹² See ALTS Opposition Brief on the Merits, *ALTS v. Iowa Utilities Board, et al.* (May 18, 1998) ("this Court should be careful not to compromise the FCC's plenary power to order the provisioning of combinations of network elements pursuant to Section 251(c)(6). Yet, in its Petition for Declaratory Ruling, ALTS argues that the Commission should take action pursuant to section 251(c)(6) to correct problems it argues exists with collocation agreements. See ALTS Petition at 2 and 18. In addition, the ALTS Petition argues that Section 252 should apply to ILECs when they deploy advanced telecommunications networks. See ALTS Petition at 5. ALTS, however, argues in its Supreme Court reply brief at the Court should affirm most favored nations treatment for CLECs pursuant to Section 252(i). See ALTS Reply Brief at 6 (June 17, 1998). These examples make abundantly clear that the ALTS request for Declaratory Ruling is inconsistent with other filings made by ALTS on the very issues it argues are settled law. USTA's position on the ALTS Petition in no way should be read to infer that the Commission should await the outcome of litigation to approve RBOC and any other petitions to deploy advanced data and Internet networks now. The Commission can, and should, approve such petitions immediately by forbearing from apply needless regulations upon ILECs who should be permitted to compete, in the already highly competitive data and Internet markets, without the barriers to entry that ALTS and others would have the Commission create.

¹³ Section 706(a).

should the Commission engage in business-as-usual and impose regulations akin to those currently applied to ILEC wireline operations, such regulations: (1) will simply be anti-competitive; (2) are contrary to Sections 706, 11 and 10 of the Act; (3) will deprive consumers of expanded choices; (4) will serve as a disincentive to investment in ILEC networks; and (5) will adversely impact the continued growth of the economy and the competitive advantage of American technology. As such, rapid deployment of advanced telecommunications networks will become a reality for ILECs.¹⁴

USTA comments in response to the APT Petition also urged the Commission to act immediately to approve ILEC petitions to deploy advanced data and Internet networks. As USTA stated:

Section 706 should be used to spur the "rapid" private sector deployment of advanced telecommunications services as intended by the Act, not as another Commission proceeding to restrict ILECs to their current lines of business.¹⁵

Moreover, the benefits to consumers and the nation of immediate approval by the Commission of the RBOC Petitions to deploy advanced telecommunications networks without the regulatory burdens that ALTS and others would impose, are undeniable. USTA's arguments supporting regulatory forbearance are:

(1) deployment of high-speed, advanced telecommunications networks is in the public interest; (2) the information technology market-place is highly competitive with market forces fueling consumer and business demands for expanded bandwidth capacity for data and Internet services; (3) regulatory forbearance must drive the deployment of advanced telecommunications networks; (4) America's global technological and economic advantage can only

¹⁴ See USTA Comments at 6, CC Docket Nos. 98-11, 98-26, 98-32 (April 6, 1998).

¹⁵ See USTA Comments at 20, APT Petition for Rulemaking, RM -9244 (April 13, 1998).

be impeded by imposition of government regulations which serve as disincentives to investment by ILECs in high-speed data and Internet networks; and (5) the Commission should not permit its good offices to be misused by forces with unsubstantiated assertions of doom and gloom if ILECs compete on the same playing field as Qwest, Level 3 WorldCom/MCI, Bell Canada and others now compete. Should the Commission fall pray to the rhetoric already circulating at its headquarters that would keep ILECs from rapidly deploying advanced telecommunications networks, then consumers and businesses would have fewer choices, certain areas may lack access to advanced telecommunications services, and the domestic economy will suffer the consequences of less, rather than more competition. USTA urges the Commission to act swiftly to approve the existing application by the RBOCs to construct advanced telecommunications networks. The Commission's approval of these applications would send the right signal that market demand, and not unnecessary, burdensome and anti-competitive regulations, will drive economic growth through high-speed data and Internet services.¹⁶

The Commission must not permit ALTS and others to use the regulatory process to gain competitive advantages at the expense of ILECs, consumers, and the nation. Section 706 requires the Commission to remove barriers, not erect barriers, to competition as ALTS proposes. Market-based forces must drive competition. The absence of market-driven competition will lead to regulatory delay in deployment of advanced data and Internet networks and services - - delays akin to the multi-billion dollar losses in consumer welfare benefits associated with the deployment of cellular and voice messaging services.¹⁷ According to Professor Jerry Hausman "Past welfare losses have been in the billions of dollars per year, and the FCC's current approach

¹⁶ See USTA's Reply Comments at 7. APT Petition for Rulemaking, RM- 9244 (May 4, 1998).

¹⁷ See USTA's Comments at 17, CC Docket Nos. 98-1, 98-26, 98-32 (April 6, 1998).

may well lead to comparable consumer welfare losses in the future.”¹⁸ To ensure that the benefits derived from deployment by ILECs of advanced telecommunications networks does occur “The Commission need only open the door to competition by stepping away from burdensome regulatory paradigms which do nothing more than forestall deployment of critically important technological innovations, while protecting others from the very competition intended by the Act.”¹⁹ The ALTS Petition should be denied.

Respectfully submitted,

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¹⁸ *Id.*

¹⁹ See USTA's Reply Comments at 3, CC Docket Nos. 98-11, 98-26, 98-32 (May 6, 1998).